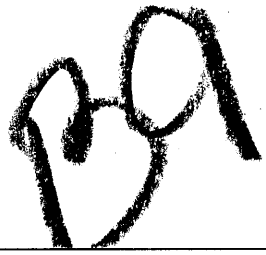

**U.S. Department of Justice**

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

Public Copy

FILE: [redacted] Office: Vermont Service Center Date: AUG 2 2001
EAC 00 276 53465

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(iii).

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(iii), as the battered child of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she qualifies for the desired classification, pursuant to 8 C.F.R. 204.2(e)(1)(i)(A), because she is over the age of 21 years. The director, therefore, denied the petition.

On appeal, the petitioner states, "I was under 21 years of age when court order was set for me and my brothers to get our permanent resident."

8 C.F.R. 204.2(e)(1) states, in pertinent part, that:

> (i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the child of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident parent;
> >
> > (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident parent while residing with that parent;
> >
> > (F) Is a person of good moral character; and
> >
> > (G) Is a person whose deportation (removal) would result in extreme hardship to himself or herself.

The petition, Form I-360, shows that the petitioner arrived in the United States in November 1988. On November 13, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the

subject of extreme cruelty perpetrated by, her lawful permanent resident father.

8 C.F.R. 204.2(e)(1)(i)(A) requires that the self-petitioner must establish that she is the child of a citizen or lawful permanent resident of the United States.

Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. The record reflects that the petitioner was born on July 14, 1979. On November 13, 2000, approximately four months after the petitioner turned 21 years of age, she filed this self-petition. The director, therefore, determined that the petitioner did not qualify as the "child" of a lawful permanent resident because she was over 21 years of age.

8 C.F.R. 204.2(e)(1)(ii) provides that the self-petitioning child must be unmarried, less than 21 years of age, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed. For this reason, the petition may not be approved.

The petitioner is statutorily ineligible for the benefit sought pursuant to section 204(a)(1)(B)(iii) of the Act. She has, therefore, failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(e)(1)(i)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.